

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

CAROL CHESEMORE, DANIEL DONKLE,
THOMAS GIECK, MARTIN ROBBINS, and
NANNETTE STOFLET, on behalf of
themselves, Individually, and on Behalf of All
Others Similarly Situated,

Plaintiffs,

v.

ALLIANCE HOLDINGS, INC., DAVID B.
FENKELL, KAREN FENKELL, A.H.I.,
INC., AH TRANSITION CORP., PAMELA
KLUTE, JAMES MASTRANGELO,
STEPHEN W. PAGELOW, JEFFREY A.
SEEFELDT, ALPHA INVESTMENT
CONSULTING GROUP, LLC, and JOHN
MICHAEL MAIER,

Defendants,

and

TRACHTE BUILDING SYSTEMS, INC.
EMPLOYEE STOCK OWNERSHIP PLAN
and ALLIANCE HOLDINGS, INC.
EMPLOYEE STOCK OWNERSHIP PLAN,

Nominal Defendants.

Judge William Conley

Magistrate Judge Stephen L. Crocker

Case No. 09-CV-00413

**DECLARATION OF DANIEL FEINBERG IN SUPPORT OF PLAINTIFFS' MOTION
FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, Daniel Feinberg, declare under penalty of perjury of the laws of the United States as follows:

1. I am a member in good standing of the Bar of the State of California and a shareholder in the law firm of Lewis, Feinberg, Lee, Renaker & Jackson, P.C. ("LFLRJ"). I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them.

2. I am a 1988 graduate of Boalt Hall School of Law at the University of California at Berkeley (now called "Berkeley Law"). I was hired by the firm then known as Sigman &

Lewis as an associate in 1988, and became a partner in 1993. I have specialized in employee benefits law since joining the firm.

3. I have been active in the National Employment Lawyers Association and spoke at their 1992, 1996, 1998, 1999 and 2009 Annual Conferences. I have presented papers at many other legal conferences, including the 1994-1997 and 2000 Annual Meetings of the American Bar Association, the 1999, 2001 and 2003 Annual Meetings of the Western Pension and Benefits Conference, the 2005 and 2006 Los Angeles Benefits Conferences, and numerous West Legal Works' ERISA Litigation Conferences from 1995 to the present.

4. I am also a contributing editor on pension law for a legal reference book published by Little, Brown and Company in 1995, and a contributing author to the 2000, 2003, 2006 and 2008 Supplements to the ABA Section of Labor and Employment Law's book entitled Employee Benefits Law. My other publications include ABA Employee Benefits Committee Newsletter, "The Seventh Circuit Revisits Class Certification of Breach of Fiduciary Duty Claims Involving Defined Contribution Plans," Fall 2013; ERISA Litigation Reporter, "*Abatie v. Alta Health - A Victory for Plaintiffs on the Standard of Review*," Vol. 14, No. 5, September-October 2006; The Practical Lawyer, "Independent Contractors, Leased Employees and Other Contingent Workers," Vol. 47, No. 2, March 2001; ERISA Litigation Reporter, "*Wetzel v. Lou Ehlers Cadillac Group LTD: Distinctions Without a Difference?*," October 2000; ERISA Litigation Reporter, "*Varsity Corp. v. Howe: The Plaintiff's Perspective*," Vol. 5, No. 2, June 1996 (co-author with Jeffrey Lewis); Labor Center Reporter, "*Varsity Corp. v. Howe*," Vol. 298, Summer 1996 and "Have You Been Denied Health Benefits Recently?," Vol. 303, Spring 1998 (co-author with Tyler Weaver); and Tax Management Compensation Planning Journal, "Claims Against ERISA Plan Service Providers", Vol. 23, No. 8, August 4, 1995 (co-author with Robert Pizzo).

5. My published cases include *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955 (9th Cir. 2006) (en banc) (argued); *Comer v. Salomon Smith Barney*, 437 F.3d 1098 (9th Cir. 2006) (argued); *Lee v. California Butchers' Pension Trust Fund*, 154 F.3d 1075 (9th Cir. 1998) (argued); *Mongeluzo v. Baxter Travenol LTD Plan*, 46 F.3d 938 (9th Cir. 1995) (argued); *Kayes v. Pacific Lumber Co.*, 51 F.3d 1449 (9th Cir. 1995) (on briefs); *Sizemore v. Pacific Gas & Elec.*

Retirement Plan, 952 F.Supp. 2d 894 (N.D. Cal. 2013); *Neil v. Zell*, 677 F.Supp. 2d 1010 (N.D. Ill. 2009); *Villegas v. The Pep Boys Manny Moe & Jack of Cal.*, 551 F.Supp.2d 982 (C.D. Cal. 2008); *Arrez v. Kelly Services, Inc.*, 522 F. Supp. 2d 997 (N.D. Ill. 2007); *Arora v. Hartford Life and Annuity Ins. Co.*, 519 F.Supp.2d 1021 (N.D. Cal. 2007); *Weis v. Accidental Death & Dismemberment Ben. Plan of Kaiser Foundation*, 442 F. Supp. 2d 850 (N.D. Cal. 2006); *Bell v. Exec. Comm. of the UFCW Pension Plan for Employees*, 191 F.Supp.2d 10 (D.D.C. 2002); and *Levin v. Unum Life Ins. Co.*, 33 F.Supp.2d 1179 (N.D. Cal. 1998). The *Abatie* decision established a new standard of review for employee benefits cases in the Ninth Circuit where the party deciding a benefit claim has a financial conflict of interest. The *en banc* decision has already been cited more than 700 times since it was issued.

6. I have also worked as a Lecturer at Berkeley Law (UC Berkeley – Boalt Hall). I taught a class on Employee Benefits Law in Spring 2012. I have been named a “Northern California Super Lawyer” for the last ten years and a Northern California “Top 100” Lawyer for 2011, 2012, and 2013. In November 2003, The Recorder newspaper gave me an honorable mention in the category of top attorney for ERISA plaintiffs in the San Francisco Bay Area.

7. I have served as a private mediator in ERISA-related litigation matters, including a class action in the Middle District of Florida wherein I was appointed Special Master by the Court for settlement purposes. I have also served as an expert witness in ERISA-related litigation.

8. I am serving or have served as lead or co-counsel in numerous ERISA class actions, including cases against the Tribune Company, Pacific Lumber Company, Lone Star Steel Company, Color Tile, Kelly Moore Paint, and four related class actions in the District of Oregon arising from the largest pension investment fraud in U.S. history, consolidated as *In Re Consolidated Capital Consultants Litigation*, Civil Case No. 00-1290-KI. I have served as lead or co-counsel in numerous vacation pay class actions, including class actions against Providian, CKE Restaurants, Inc., Adecco, Kelly Services, Sodexho, Inc., Vicorp Restaurants, Inc., Securitas Security Services USA, Inc., and Gottschalks, Inc.

9. LFLRJ is one of the few law firms in the United States that specializes in

representing plaintiffs in employee benefits litigation. Because the Employee Retirement Income Security Act of 1974 (ERISA) provides for federal jurisdiction, ERISA litigation specialists are able to represent clients in District Courts throughout the United States after being admitted *pro hac vice*. For example, my firm has represented clients in litigation in the United States District Courts for the District of Connecticut, the Southern District of New York, the Northern, Central and Southern Districts of Illinois, the Northern District of Texas, the Eastern District of Michigan, the District of Oregon, the Western District of Pennsylvania, and the Middle District of North Carolina, in addition to many actions in the District Courts of California. Therefore, the relevant community for determining the prevailing market rate is the national community of ERISA specialists, which is small.

10. I have litigated numerous ESOP cases, including cases involving ESOPs sponsored by Tribune Company, Kelly Moore Paint Co., Valin Corp., Houlihan Smith & Co., People Care, Inc., Southern California Pipeline, Inc., Ruiz Food Products, Inc., and Valley Aggregate, Inc. I am therefore familiar with the complexity of ESOP litigation.

11. Effective February 2014, my hourly litigation rate is \$775 per hour. My hourly litigation rate from January 2012 until February 2014 was \$725 per hour. From January 2010 until January 2012, my hourly litigation rate was \$650 per hour. Based on my knowledge of the relevant community of ERISA specialists and my experience in ERISA litigation, I believe that my hourly rate is reasonable and within market rate for attorneys at my experience level. In 2008, the Northern District of California awarded attorneys' fees to me at the hourly rate of \$575. *Caplan v. CNA Financial Corp.*, 573 F.Supp.2d 1244, 1249-50 (N.D. Cal. 2008). In 2007, the Central District of California also awarded attorneys' fees to me at the hourly rate of \$575. *Hawkins-Dean v. Metropolitan Life Ins. Co.*, 2007 WL 2735684, at *1 (C.D. Cal. 2007) ("the Court finds the hourly rate of Mr. Feinberg [\$575] . . . to be reasonable").

12. I am not being compensated for my time in providing this declaration.

13. I do not have a financial stake in the outcome of the above-referenced litigation.

14. Based on my experience stated above, I am familiar with the ERISA plaintiffs' bar. The size of that bar is small, and many of those who handle ERISA cases handle only

individual benefit claims. . Cohen Milstein is one of a small number of firms that represents plaintiffs in ERISA class actions and has extensive experience in litigating claims on behalf of participants in ESOPs holding non-publicly traded employer stock. In fact, I can think of only three firms who regularly handle such ESOP cases on behalf of participants: my firm, Keller Rohrback and Cohen Milstein.

15. Class action ERISA litigation is time-consuming, difficult, and risky. It also requires specialized knowledge and experience. Typically, the clients, who are employees and retirees, do not have sufficient individual resources to pay for the fees and expenses of this complex and time-consuming litigation.

16. Litigating ESOP valuation cases is particularly difficult, risky and expensive, and requires specialized knowledge and expertise. At a minimum, ESOP valuation cases require retention of an expert in valuation and such experts are expensive. ESOP valuation cases frequently involve a significant amount of fact discovery, usually including depositions of the persons who performed the valuation and the fiduciaries of the plan, and can also include the executives of the company, and any lenders or others involved in the transaction. As a result, the attorneys who handle these cases themselves must have a good understanding and knowledge about valuation and financial matters to understand the transactions and prosecute these cases.

17. I am familiar with the *Chesemore v. Alliance Holdings, Inc., et al.* case and the issues presented in it because I have read several opinions issued by the District Court.

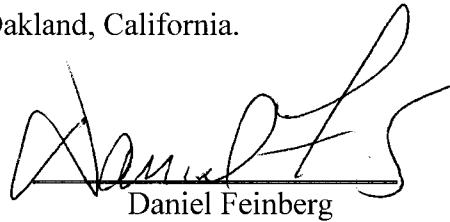
18. I am personally familiar with the work and qualifications of the Cohen Milstein firm, including attorneys Karen L. Handorf and Joseph Barton. My Firm was co-counsel with Cohen Milstein, including Mr. Barton, in the case *Simpson v. Fireman's Fund Insurance Co.*, Case No. C 05-00225 (N.D. Cal.). Based on that case and other interactions with Mr. Barton, I am therefore aware of his knowledge, training and experience, and skill as an employment lawyer. Cohen Milstein's ERISA attorneys' reputation as employee benefits lawyers, especially in the area of ERISA and class action litigation, is noteworthy.

19. Based on my knowledge of the relevant community of ERISA class action litigators and my experience with similarly complex litigation, I am familiar with attorney fee

awards in ERISA cases around the country and the market rate for services in ERISA cases. Fee awards compensate attorneys for the risk of not prevailing, as well as for the attorneys' expertise and advocacy, and their willingness to take cases on a contingent basis, including carrying expenses and the inevitable delays in receiving any compensation, and the results ultimately obtained. I believe that the hourly rates that Plaintiffs seek here – of \$775 per hour for Karen L. Handorf; \$635 for R. Joseph Barton; \$530 for Monya Bunch; \$415 for Mary J. Bortscheller; and \$250 for paralegal work – are reasonable and within market rate for attorneys at their experience level. The hourly rates for Ms. Handorf and Mr. Barton are similar to LFLRJ's hourly rates for shareholders with similar experience. The hourly rates for Ms. Bunch and Ms. Bortscheller are about \$50 per hour higher than LFLRJ's hourly rates for associates with similar experience.

I declare under penalty of perjury under the laws of the United States of America and the state of California that the foregoing is true and correct.

Executed this 11th day of June, 2014, in Oakland, California.



A handwritten signature in black ink, appearing to read "Daniel Feinberg".

Daniel Feinberg